

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 615**

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**Introduced by Assembly Member Niello**

February 25, 2009

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An act to amend Section 5401 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 615, as amended, Niello. Workers' compensation.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law requires an employer to provide a claim form and a notice of potential eligibility for workers' compensation benefits within one working day of receiving notice or knowledge of an employee's injury that results in lost time beyond the employee's work shift at the time of injury or that results in medical treatment beyond first aid. First aid is defined to mean any one-time treatment, and any followup visit, for the purpose of observation of minor industrial injuries that do not ordinarily require medical care.

~~This bill would instead require the employer to provide a claim form and a notice of potential eligibility if the injury results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness, or if the injury involves a significant injury or illness, as diagnosed by a physician or other licensed health care professional, that does not result in death,~~

days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

It

*This bill* would delete the above-described definition of first aid in existing law and would authorize the administrative director to adopt regulations to define various terms, as specified. Until these regulations are adopted, the bill would define ~~various terms, including~~ medical treatment and first aid, ~~in the bill aid.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. It is the intent of the Legislature to clarify and  
2 streamline regulatory requirements of the workers' compensation  
3 system by coordinating the requirements under workers'  
4 compensation law for an employer to provide a claim form with  
5 the requirements under the federal Occupational Safety and Health  
6 Act of 1970 (P.L. 91-596) for an employer to maintain records of  
7 occupational injuries and illnesses.

8 SEC. 2. Section 5401 of the Labor Code is amended to read:

9 5401. (a) Within one working day of receiving notice or  
10 knowledge of injury under Section 5400 or 5402, ~~if the injury~~  
11 ~~results in death, days away from work, restricted work, transfer to~~  
12 ~~another job, medical treatment beyond first aid, or loss of~~  
13 ~~consciousness, or if the injury involves a significant injury or~~  
14 ~~illness, as diagnosed by a physician or other licensed health care~~  
15 ~~professional, that does not result in death, days away from work,~~  
16 ~~restricted work, transfer to another job, medical treatment beyond~~  
17 ~~first aid, or loss of consciousness, the employer shall provide,~~  
18 *which injury results in lost time beyond the employee's work shift*  
19 *at the time of injury or which results in medical treatment beyond*  
20 *first aid, the employer shall provide, personally or by first-class*  
21 *mail, a claim form and a notice of potential eligibility for benefits*  
22 *under this division to the injured employee, or in the case of death,*  
23 *to his or her dependents. The claim form shall request the injured*  
24 *employee's name and address, social security number, the time*  
25 *and address where the injury occurred, and the nature of and part*  
26 *of the body affected by the injury. Claim forms shall be available*  
27 *at district offices of the Employment Development Department*

1 and the division. Claim forms may be made available to the  
2 employee from any other source.

3 (b) Insofar as practicable, the notice of potential eligibility for  
4 benefits required by this section and the claim form shall be a  
5 single document and shall instruct the injured employee to fully  
6 read the notice of potential eligibility. The form and content of the  
7 notice and claim form shall be prescribed by the administrative  
8 director after consultation with the Commission on Health and  
9 Safety and Workers' Compensation. The notice shall be easily  
10 understandable and available in both English and Spanish. The  
11 content shall include, but not be limited to, the following:

12 (1) The procedure to be used to commence proceedings for the  
13 collection of compensation for the purposes of this chapter.

14 (2) A description of the different types of workers' compensation  
15 benefits.

16 (3) What happens to the claim form after it is filed.

17 (4) From whom the employee can obtain medical care for the  
18 injury.

19 (5) The role and function of the primary treating physician.

20 (6) The rights of an employee to select and change the treating  
21 physician pursuant to subdivision (e) of Section 3550 and Section  
22 4600.

23 (7) How to get medical care while the claim is pending.

24 (8) The protections against discrimination provided pursuant to  
25 Section 132a.

26 (9) The following written statements:

27 (A) You have a right to disagree with decisions affecting your  
28 claim.

29 (B) You can obtain free information from an information and  
30 assistance officer of the state Division of Workers' Compensation,  
31 or you can hear recorded information and a list of local offices by  
32 calling [applicable information and assistance telephone  
33 number(s)].

34 (C) You can consult an attorney. Most attorneys offer one free  
35 consultation. If you decide to hire an attorney, his or her fee will  
36 be taken out of some of your benefits. For names of workers'  
37 compensation attorneys, call the State Bar of California at  
38 [telephone number of the State Bar of California's legal  
39 specialization program, or its equivalent].

(c) The completed claim form shall be filed with the employer by the injured employee, or, in the case of death, by a dependent of the injured employee, or by an agent of the employee or dependent. Except as provided in subdivision (d), a claim form is deemed filed when it is personally delivered to the employer or received by the employer by first-class or certified mail. A dated copy of the completed form shall be provided by the employer to the employer's insurer and to the employee, dependent, or agent who filed the claim form.

(d) The claim form shall be filed with the employer prior to the injured employee's entitlement to late payment supplements under subdivision (d) of Section 4650, or prior to the injured employee's request for a medical evaluation under Section 4060, 4061, or 4062. Filing of the claim form with the employer shall toll, for injuries occurring on or after January 1, 1994, the time limitations set forth in Sections 5405 and 5406 until the claim is denied by the employer or the injury becomes presumptively compensable pursuant to Section 5402. For purposes of this subdivision, a claim form is deemed filed when it is personally delivered to the employer or mailed to the employer by first-class or certified mail.

(e) The administrative director may adopt regulations that reasonably define the terms in subdivision (a) if those definitions would be consistent with the definitions ~~in~~ *adopted pursuant to* Section 6410 and *the definitions* in the recordkeeping regulations adopted pursuant to the federal Occupational Safety and Health Act of 1970 (P.L. 91-596). Until the administrative director adopts these regulations, the following definitions shall apply for purposes of subdivision (a):

(1) "Medical treatment" means the management and care of a patient to combat disease or disorder, except that it does *not* include any of the following:

(A) Visits to a physician or other licensed health care professional solely for observation or ~~counseling~~ *counseling, unless it is for observation of serious exposure to a hazardous substance as defined in subdivision (i) of Section 6302.*

(B) The conduct of diagnostic procedures, such as X-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes, such as eye drops to dilate the pupils.

~~(C) "First aid".~~

1 (2) (A) “First aid” means any of the following:

2 ~~(A)~~

3 (i) Using a nonprescription medication at nonprescription  
4 strength. For medications available in both prescription and  
5 nonprescription form, a recommendation by a physician or other  
6 licensed health care professional to use a nonprescription  
7 medication at prescription strength shall be considered medical  
8 treatment.

9 ~~(B)~~

10 (ii) Administering tetanus immunizations. Other immunizations,  
11 such as a hepatitis B vaccine or rabies vaccine, shall be considered  
12 medical treatment.

13 ~~(C)~~

14 (iii) Cleaning, flushing, or soaking wounds on the surface of  
15 the skin.

16 ~~(D)~~

17 (iv) Using wound coverings such as bandages, gauze pads, or  
18 butterfly bandages. Other wound closing devices, such as sutures  
19 staples, shall be considered medical treatment.

20 ~~(E)~~

21 (v) Using hot or cold therapy.

22 ~~(F)~~

23 (vi) Using any nonrigid means of support, such as elastic  
24 bandages, wraps, and nonrigid back belts. Devices with rigid stays  
25 or other systems designed to immobilize parts of the body shall  
26 be considered medical treatment.

27 ~~(G)~~

28 (vii) Using temporary immobilization devices while transporting  
29 an accident victim, such as splints, slings, neck collars, or  
30 backboards.

31 ~~(H)~~

32 (viii) Drilling of a fingernail or toenail to relieve pressure, or  
33 draining fluid from a blister.

34 ~~(I)~~

35 (ix) Using eye patches.

36 ~~(J)~~

37 (x) Removing foreign bodies from the eye using only irrigation  
38 or a cotton swab.

39 ~~(K)~~

1 (xi) Removing splinters or foreign material from areas other  
2 than the eye by irrigation, tweezers, cotton swabs, or other simple  
3 means.

4 ~~(L)~~

5 (xii) Using finger guards.

6 ~~(M)~~

7 (xiii) Using massages. Physical therapy or chiropractic treatment  
8 shall be considered medical treatment.

9 ~~(N)~~

10 (xiv) Drinking fluids for relief of heat stress.

11 ~~(3) “Restricted work” means either (A) the employer, as the~~  
12 ~~result of a work-related injury or illness, keeps the employee from~~  
13 ~~performing one or more routine functions of his or her job, or from~~  
14 ~~working the full work day that he or she would otherwise have~~  
15 ~~been scheduled to work or (B) a physician and surgeon or other~~  
16 ~~licensed health care professional recommends that the employee~~  
17 ~~not perform one or more of the routine functions of his or her job,~~  
18 ~~or not work the full workday that he or she would otherwise have~~  
19 ~~been scheduled to work.~~

20 ~~(4) “Significant injury or illness that does not result in death,~~  
21 ~~days away from work, restricted work for job transfer, medical~~  
22 ~~treatment beyond first aid, or loss of consciousness” means~~  
23 ~~work-related injuries involving cancer, chronic irreversible disease,~~  
24 ~~a fractured or cracked bone, or a punctured eardrum, and some~~  
25 ~~significant progressive diseases, such as byssinosis, silicosis, and~~  
26 ~~some types of cancer, for which medical treatment or work~~  
27 ~~restrictions may not be recommended at the time of diagnosis but~~  
28 ~~are likely to be recommended as the disease progresses.~~

29 ~~(B) “First aid” shall not include any treatment resulting from~~  
30 ~~serious exposure to a hazardous substance as defined in~~  
31 ~~subdivision (i) of Section 6302.~~